

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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FRANK CORSINI, <i>et al.</i> ,	:	
	:	
Plaintiffs,	:	
	:	24-CV-3196 (VSB)
-against-	:	
	:	<u>ORDER</u>
EDWARD J. REICH, <i>et al.</i> ,	:	
	:	
Defendants.	:	
	:	
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<u>VERNON S. BRODERICK, United States District Judge:</u>		

Plaintiffs filed the complaint in this action on April 26, 2024. (Doc. 1.) Pursuant to Federal Rule of Civil Procedure 4(m), if “a defendant is not served within 90 days after the complaint is filed, the court . . . must dismiss the action without prejudice against that defendant or order that service be made within a specified time.” Plaintiffs were thus obligated to serve Defendants no later than July 25, 2024. On July 31, 2024, I entered an Order directing Plaintiffs to “submit a letter of no more than three (3) pages, supported by legal authority, demonstrating good cause as to why this case should not be dismissed pursuant to Federal Rule of Civil Procured 4(m)” by August 6, 2024. (Doc. 24.) On August 6, 2024, counsel for Plaintiffs submitted a letter demonstrating good cause for an extension of time to complete service. (Doc. 27.) I therefore extended the time for Plaintiffs to complete service to September 12, 2024. (Doc. 28.) Plaintiffs failed to complete service as to all Defendants, or request an extension, by September 12, 2024. In response to a September 13, 2024, letter from counsel for Defendant Boies Schiller Flexner LLP (“Boies Schiller”) regarding the remaining unserved Defendants, (Doc. 34), I directed Plaintiffs to respond to Defendants’ request for this Court to dismiss the Defendants that had yet to be served by September 24, 2024, (Doc. 35). On September 24, 2024,

Plaintiffs filed a letter requesting another extension. (Doc. 36.) I granted this request on September 26, 2024, warning that “[i]f Plaintiff fails to file affidavits of service for the unserved Defendants by [October 11, 2024], I will dismiss them under Rules 4(m) and/or 41(b) of the Federal Rules of Civil Procedure.” (Doc. 38.) I also informed Plaintiffs that “[t]he method of service must comply with Rule 4.” (*Id.*)

To date, Plaintiffs have not completed proper service on Defendants James M. Costan, Christopher Green, Ian Dumain, or William Ohlemeyer, nor have Plaintiffs sought further extensions. As to Mr. Costan and Mr. Green, there is no evidence of Plaintiffs attempting service. As to Mr. Dumain, Plaintiffs filed an “Affirmation of Due Diligence” on October 11, 2024, noting that service was attempted on October 7, 2024, at Boies Schiller’s New York office, but could not be completed because Mr. Dumain no longer works there. (Doc. 45.) Yet as Defendant Boies Schiller points out, (*see* Doc. 46 at 2), Plaintiffs acknowledged that Mr. Dumain no longer worked at Boies Schiller in their September 24, 2024 letter to the Court, preceding this service attempt at the Boies Schiller office, (Doc. 36 at 2). As to Mr. Ohlemeyer, Plaintiffs filed five documents entitled “Affirmation of Mailing,” detailing their mailing of the summons and complaint to various addresses associated with Mr. Ohlemeyer. However, “under both New York law and Rule 4, service on an individual by mail alone is insufficient.” *Futia v. Roberts*, No. 23 CV 1774, 2023 WL 8237246, at *7 (S.D.N.Y. Nov. 28, 2023).

Accordingly, this matter is hereby DISMISSED without prejudice against Defendants James M. Costan, Christopher Green, Ian Dumain, and William Ohlemeyer pursuant to Fed. R. Civ. P. 4(m) for failure to timely enact service on defendants without good cause. The Clerk of the Court is respectfully directed to terminate Defendants James M. Costan, Christopher Green, Ian Dumain, and William Ohlemeyer from the docket.

SO ORDERED.

Dated: October 18, 2024
New York, New York

A handwritten signature in black ink, reading "Vernon Broderick". The signature is written in a cursive style with a large, stylized "V" and "B".

Vernon S. Broderick
United States District Judge